

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CRIMINAL ACTION
	)	
JUBAIR AHMAD,	)	1:11-cr-554
	)	
Defendant.	)	
_____	)	

REPORTER'S TRANSCRIPT

SENTENCING HEARING

Friday, April 13, 2012

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BEFORE: THE HONORABLE T.S. ELLIS, III  
Presiding

APPEARANCES: WILLIAM N. HAMMERSTROM, JR. AUSA  
JOHN GIBBS, AUSA  
United States Attorney's Office  
2100 Jamieson Ave.  
Alexandria, VA 22314

For the Government

BRIAN LEE MIZER, ESQ.  
Office of the Federal Public Defender  
1650 King St., Suite 500  
Alexandria, VA 22314

For the Defendant

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MICHAEL A. RODRIQUEZ, RPR/CM/RMR  
Official Court Reporter  
USDC, Eastern District of Virginia  
Alexandria, Virginia

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(Court adjourned)

1 THE CLERK: Case Number 11, Criminal 554,  
2 United States of America versus Jubair Ahmad. Will  
3 counsel please state your appearance for the record.

4 ATTORNEY HAMMERSTROM: Good morning your  
5 Honor, Neil Hammerstrom and John Gibbs for the United  
6 States, and Mr. Gibbs will be arguing the sentencing  
7 factors for the Court this morning.

8 THE COURT: All right. Good morning, Mr.  
9 Gibbs and Mr. Hammerstrom.

10 ATTORNEY GIBBS: We also have Dave Anders  
11 from the FBI at counsel's table, Judge.

12 THE COURT: All right. Good morning to you  
13 as well.

14 ATTORNEY MIZER: Good morning, Brian Mizer  
15 on behalf of Mr. Ahmad, who is present.

16 THE COURT: All right.

17 Good morning to you.

18 Good morning, Mr. Ahmad.

19 THE DEFENDANT: Good morning, your Honor.

20 THE COURT: All right.

21 This matter is before the court, this  
22 defendant having been found guilty on the basis of a  
23 plea of having of violated 18 U.S.C. Section 2339B,  
24 which is providing material support and resources to a  
25 designated foreign terrorist organization, in this case

1 LeT.

2 The record reflects that this defendant  
3 participated in the production, staging and creation of  
4 a video to be used to recruit members to LeT to serve  
5 as -- to serve as members in carrying out terrorist  
6 activities. He also assisted in recruiting persons to  
7 do the same.

8 All right. Mr. Mizer, have you had an  
9 adequate opportunity to review the presentence report  
10 and to review it with your client?

11 ATTORNEY MIZER: I have, your Honor, yes.

12 THE COURT: Mr. Ahmad, have you had an  
13 adequate opportunity to review the presentence report  
14 and to review it with your counsel, Mr. Mizer?

15 THE DEFENDANT: Yes, sir, I do.

16 THE COURT: And are you fully satisfied with  
17 his advice and counsel in this case?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right.

20 Sir, you may be seated.

21 Do you have any objections, Mr. Mizer, to  
22 the presentence investigation report?

23 ATTORNEY MIZER: No, your Honor, none.

24 THE COURT: And, Mr. Gibbs, is it?

25 ATTORNEY GIBBS: Yes, sir.

1 THE COURT: Mr. Gibbs, I take it -- I asked  
2 routinely whether the defense and the government have  
3 had occasion to review the report, but of course I have  
4 literally several hundred pages reflecting that you  
5 have, but do you have any objections or corrections?

6 ATTORNEY GIBBS: None whatsoever, Judge.

7 THE COURT: All right. The Court will adopt  
8 the findings and conclusions of the presentence  
9 investigation report as the Court's findings and  
10 conclusions in this matter.

11 And I'll also make a part of the presentence  
12 investigation report -- no, I don't need to make a part  
13 all of these attachments. Is there anything, Mr. Mizer,  
14 in your submission that you think should be made a part  
15 of the presentence report? I did not see anything.

16 ATTORNEY MIZER: No, your Honor.

17 THE COURT: All right. We are now at the  
18 point of allocution. This is your opportunity now,  
19 Mr. Ahmad, to address the Court and to say anything that  
20 you wish to the Court by way of extenuation or  
21 mitigation or, indeed, anything you think the Court  
22 should know before sentence is imposed.

23 Now, you are not required to say anything if  
24 you don't wish to. But you do have the opportunity to  
25 say something if you do wish to, and this is your

1 opportunity.

2 Do you wish to addressed the Court?

3 THE DEFENDANT: Yes, I want to say a couple  
4 of things. First, I want to mention one incident  
5 happened to me in the jail house. I was talking to my  
6 counselor of our block, and she asked me --

7 THE COURT: Talking, I'm sorry, to your  
8 counselor about what?

9 THE DEFENDANT: Of our block. She asked  
10 me --

11 ATTORNEY MIZER: Cell block, your Honor.

12 THE COURT: Oh, cell block. Yes.

13 THE DEFENDANT: She asked me if I am  
14 citizen. I said, "no, I have green card." And she was  
15 like so they're going to --

16 THE COURT: I'm sorry, Mr. Ahmad, I will  
17 make a little bit more of an effort to understand you.  
18 Your English is good, but I am -- my hearing is not as  
19 good as your English. Try it again.

20 THE DEFENDANT: Yes. I was saying like I  
21 was talking to my -- our counselor of our block and she  
22 asked me if I am citizen. I told her, "no, I have a  
23 green card. I am not citizen." So she was like, "so  
24 they are going to send you back to Pakistan." I say,  
25 "yes." And so she was like, "so you still hate

1 Americans?"

2 So this question kind of upset me. I told  
3 her, you know, I don't hate Americans. I was working  
4 with Americans, so why would I hate them. So, I just  
5 wanted to mention this in the court. People have this  
6 kind of thinking and the Judge, these other people, this  
7 kind of ignorance, you know.

8 And second thing about the video I made, I  
9 did not know this matter would be that serious. I  
10 thought it's just a video, you know. And I realize I  
11 broke the law, and I am sorry for that, and I won't do  
12 it during my presence in the United States. And I hope  
13 you would give me a second chance, and that's it. Thank  
14 you.

15 THE COURT: What will you do when you go  
16 back to Pakistan?

17 THE DEFENDANT: Well, right now I am  
18 planning to get married and start something, some  
19 business, some kind of business.

20 THE COURT: And resume your connection with  
21 LeT?

22 THE DEFENDANT: Not really, no.

23 THE COURT: Why not?

24 THE DEFENDANT: Because I realized, you  
25 know, it's not right thing to do.

1 THE COURT: All right.

2 You may be seated.

3 THE DEFENDANT: All right. (Complied).

4 THE COURT: Mr. Mizer?

5 ATTORNEY MIZER: Thank you, your Honor.

6 I wanted to started with one point of  
7 clarification, your Honor. The government in its two  
8 sentencing papers refers to a conversation by Mr. Ahmad  
9 and Talha Saeed, the son of the founder of  
10 Lashkar-e-Tayyiba, and I think that there is an issue  
11 with the timing of this chat, and it's at tab B for your  
12 Honor's reference.

13 At tab A you will see that a lot of these  
14 conversations are taking place -- there is an  
15 overlapping conversation, if you will. And one person  
16 is talking on a microphone in a Pakistani forum called  
17 Balux, and then Mr. Ahmad or Talha Saeed will  
18 simultaneously be typing or instant messaging.

19 And really this conversation that takes  
20 place at tab B is not listed in the correct order. And  
21 it's important because the government makes much of this  
22 reference to the Mumbai attacks. And if I could just  
23 explain how that actually took place and was actually  
24 overlaid I think it will be important for the Court.

25 Mr. Ahmad doesn't dispute he is the



1 individual that says, "Should I paste in the Mumbai  
2 one," but you will look at that very next line, which is  
3 again Mr. Ahmad saying, "double L," which is lots of  
4 laughs or laugh out loud. The reason that that is  
5 important, Judge, is because this is Mr. Ahmad speaking  
6 with, again, a member or the son of a member of this  
7 terror group, who is saying, "should I make this video  
8 about how LeT is responsible for the Mumbai attacks?"

9 It's a joke, your Honor. And if the entire  
10 transcript was there of the audio on the other side,  
11 Talha Saeed is even heard to laugh in response to this.  
12 Because as the government quite accurately points out in  
13 its second submission, LeT has never taken  
14 responsibility for the Mumbai attack, and many  
15 Pakistanis including Mr. Ahmad believe the bizarre  
16 conspiracy theories about that attack.

17 What takes place between that, your Honor,  
18 is actually the audio, which is later down in tab B.  
19 And so after Mr. Ahmad says, "Should I list the Mumbai  
20 one," and then the double L, Talha Saeed, and you can  
21 see a reference to this. LeT me free up the mike. And  
22 so it goes back and forth with this microphone. And  
23 there is a discussion where Talha Saeed says,  
24 "Seriously, don't put anything about Mumbai in there."

25 And then later on in that chat is,

1 "Definitely put that Pakistan's nuclear -- all of a  
2 sudden the mountains of Chagi." And then Mr. Ahmad  
3 replies, "We will have to show our power." So that  
4 "We'll have to show our power" is a reference to the  
5 Chagi nuclear test as these conversations are properly  
6 overlapped.

7 And that's important, your Honor, because at  
8 two minutes and 33 seconds into this video, the very  
9 middle of the video you see something that made no sense  
10 to me at first. There appears to be a smoking mountain,  
11 until last night I went and looked at that clip, and  
12 it's dated May 23rd 1998, which is the date of  
13 Pakistan's last nuclear test. So in the center of this  
14 video, it's not anything about Mumbai. It is the  
15 testing of Pakistan's nuclear weapons.

16 Immediately following that is conventional  
17 weaponry possessed by the state of Pakistan, a British  
18 Tornado fighter bomber and then Shaheen One and Shaheen  
19 Two, which are Pakistan's missiles that were developed  
20 with the assistance of China, that are capable of  
21 launching those nuclear weapons at India should nuclear  
22 war erupt.

23 And I think that that's important, your  
24 Honor, because this video is much a nationalist video.  
25 I mean, it shows an American fighter plane, an F-16 that

1 sold to Pakistani government by the United States, in as  
2 much as it is a Jihadi video. And Mr. Ahmad isn't  
3 disputing that Jihad is a component of this video, but  
4 references to lawful weapons including fighter bombers  
5 is also a focus of this video.

6 And I think that that's important because  
7 what I tried to lay out in the sentencing papers, your  
8 Honor, is Pakistan's entire focus is on India, and  
9 Pakistan's entire range of weapons, which range from  
10 nuclear weapons all the way down to private armies like  
11 LeT, that the Pakistani fields -- Pakistani state fields  
12 in Kashmir to combat the overwhelming military  
13 superiority -- excuse me -- of the Indian army.

14 I raise that, your Honor, because I think  
15 it's important to understand how a man like Mr. Ahmad  
16 who grows up in Pakistan until age 19 who may not  
17 appreciate, as he just told the Court, the wrongfulness  
18 of this group. He certainly realizes it now. We have  
19 had many hours of conversations. He's met with the FBI  
20 on any number of occasions, and he can appreciate that  
21 distinction now. But certainly at the time when he was  
22 conducting this chat and making this video, he certainly  
23 comes from a different background than, say, someone who  
24 grows up in this country and then goes to train in the  
25 terror camps in Pakistan.

1                   And really, your Honor, this group,  
2                   Lashkar-e-Tayyiba, JUD, FIF, whatever name it wants to  
3                   go by at the present time is really unlike any foreign  
4                   designated terrorist group, I mean, in the way that it  
5                   operates openly in the state of Pakistan. It is still a  
6                   lawful organization, JUD, one part of it. It's still a  
7                   lawful organization in the state of Pakistan.

8                   As some indication, your Honor, I would  
9                   point out that Hafiz Muhammad Saeed, who now has a  
10                  bounty on his head by the United States Government,  
11                  filed a lawsuit several months ago in a court in Lahore  
12                  against US drone strikes in Pakistan. I mean, this is a  
13                  group that has a legal team and an individual that lives  
14                  at a fixed address and that is making court appearances.  
15                  And so it is distinguishable from a group, say, the  
16                  Taliban or Al Qaeda, which is more of a clandestine  
17                  organization, and which there could be --

18                  THE COURT: Taliban isn't clandestine.  
19                  Taliban is entirely Afghanistan. There are people who  
20                  are members of it who live in Pakistan, especially in  
21                  the western -- the tribal areas, but it's an  
22                  Afghanistan, an Afghan operation. Al Qaeda is an  
23                  international conspiracy.

24                  ATTORNEY MIZER: Yes, your Honor.

25                  THE COURT: And operates openly in Pakistan.

1                   ATTORNEY MIZER: Your Honor, I don't know  
2                   that -- I think I would disagree with the Court that it  
3                   operates openly --

4                   THE COURT: Maybe openly is a wrong word,  
5                   but if the head of the thing, if the leader of it,  
6                   spiritual and otherwise lives a couple miles away from  
7                   their military academy for a long period of time,  
8                   then -- in other words, I don't much regard for their  
9                   legal system. The fact that LeT may be legal or not  
10                  illegal in Pakistan doesn't make a hill of beans to the  
11                  fact that it's a terrorist organization, so designated.

12                  ATTORNEY MIZER: Absolutely, your Honor.  
13                  And I raised it only to suggest that Mr. Ahmad -- the  
14                  impact that that may have had on Mr. Ahmad's state of  
15                  mine. I mean, he has grown up in Pakistan. He left  
16                  Pakistan when these groups were not even banned by the  
17                  United States. I mean, JUD was banned after Mr. Ahmad  
18                  came to the United States. I mean, he grew up seeing  
19                  these groups open -- operate --

20                  THE COURT: All right. I take that point.

21                  ATTORNEY MIZER: Yes, your Honor.

22                  THE COURT: And he went to the LeT camps, I  
23                  think you pointed out, when he was 14 or 15.

24                  ATTORNEY MIZER: Yes, your Honor.

25                  THE COURT: At least phase one and phase

1 two, and he didn't make phase three because he was too  
2 young and too skinny.

3 ATTORNEY MIZER: That is right, your Honor.  
4 And then he came to the United States and has taken no  
5 other action off of the Internet to effectuate a desire  
6 to return to Pakistan or to --

7 THE COURT: Well, I think the video and the  
8 recruiting is certainly actions.

9 ATTORNEY MIZER: Yes, your Honor. And what  
10 I was about to say --

11 THE COURT: That is what is the heart of the  
12 illegal conduct is the video and the recruiting.

13 ATTORNEY MIZER: No additional conduct  
14 offline, your Honor, and that's I think an important  
15 distinction.

16 THE COURT: Well, he's not -- yes. He is  
17 not before the court on any other conduct than that.

18 I think that's right, isn't it, Mr. Gibbs?

19 ATTORNEY GIBBS: That is correct, Judge.

20 THE COURT: All right. What else do you  
21 have, Mr. Mizer?

22 ATTORNEY MIZER: Your Honor, the heart of  
23 this case is a five-minute video, images gathered from  
24 the video -- from the Internet, not images that  
25 Mr. Ahmad shot himself and that he assembled online.

1 That is the heart of this case. We don't dispute that  
2 videos can be important, Judge, but because some videos  
3 are important doesn't mean that all videos that are  
4 posted online are important.

5 And certainly there are videos by well-known  
6 makers, such as Anwar Al-Awlaki or Adam the American  
7 Gadahn, which the United States and the Defense could  
8 come in and say here is a criminal case where it was an  
9 individual inspired by Anwar Al-Awlaki. I mean, those  
10 cases are legion in the federal courts at this point.

11 But just all terror groups are not the same,  
12 Judge, all videos are not the same. Just because a  
13 video has potential impact or one video does doesn't  
14 mean that Mr. Ahmad's video does. These videos were  
15 posted in October and September of 2010, Judge, and the  
16 government can't present a name of a single individual  
17 that saw these videos much less was impacted or  
18 convinced to join violent Jihad because of these videos.

19 And we know again that there are individuals  
20 that do watch certain videos and are inspired to violent  
21 conduct by them. And so I think that that suggests not  
22 that Mr. Ahmad shouldn't be punished but there's kind of  
23 speculation as to how severe that punishment should be  
24 for this video. Mr. Ahmad realize he was wrong. He  
25 provided material support to a designated terrorist

1 organization, but it's qualitatively different than much  
2 of the propaganda that is cited in the government's  
3 papers and some of the individual that have made that  
4 propaganda.

5 Your Honor, with respect to the 3553(A)  
6 factors this court must fashion a punishment. I won't  
7 rehash the guidelines argument that we present in the  
8 papers, that Congress intervened before there was a  
9 material support for terrorism guideline a half a decade  
10 before and created this terrorism enhancement for other  
11 federal crimes.

12 And when the sentencing commission put in  
13 place the guidelines for material support for terrorism  
14 you have essentially a guideline that has a -- there is  
15 a terrorism enhancement for the material support for  
16 terrorism guideline, and what that results in is every  
17 single case having a guideline range if it wasn't  
18 restricted by the statutory cap of twice the statutory  
19 cap, your Honor. And we would submit that this is  
20 precisely the type of situation under Gall and Kimbrough  
21 where this court could depart from those guidelines  
22 because --

23 THE COURT: Well, I don't have any choice  
24 but to depart because the guideline are above the  
25 statutory maximum.



1           ATTORNEY MIZER: Well, they put it right at  
2           15 years, your Honor. And according to the Guidelines  
3           Commission every single material support for terrorism  
4           case should be sentenced to 15 years.

5           THE COURT: And many of them are.

6           ATTORNEY MIZER: Many of them are, your  
7           Honor, but as we put in the papers many of them are not,  
8           and there are many cases --

9           THE COURT: Well, you cite an interesting  
10          article, which I have in front of me.

11          ATTORNEY MIZER: Yes, your Honor.

12          THE COURT: From this Lewis and Clark Law  
13          Review. In fact, the whole thrust of the article has  
14          really nothing to do with the issues that you raised.  
15          Somehow or the other this professor thought it was  
16          significant to investigate whether the Justice  
17          Department's narrative was accurate or not accurate in  
18          terms of the punishment of providing material aid to  
19          the -- to the terrorist organizations.

20          But what it does show is that there are a  
21          number of these 23 B to -- I'm sorry, 2333 through 39(B)  
22          convictions. I don't know that he has all of them. I  
23          don't know that he purports to have all of them. But  
24          there are quite a few of them that are significantly --  
25          that are at the 15- or close to the 15-year period. Am

1 I wrong?

2 ATTORNEY MIZER: That's correct, your Honor.

3 THE COURT: And some from this courthouse.

4 ATTORNEY MIZER: Yes, your Honor. And in  
5 our pleading we've made an effort to update. That  
6 article I think is 2007 time frame, and with the charts  
7 and in our papers we have attempted to update cases  
8 since that time frame. And I think that two cases are  
9 important are Number 26 and Number 27 on that list, your  
10 Honor, which involve the same organization, which  
11 involve men who as adults went to Pakistan, took  
12 advanced training in these camps and was prepared to  
13 actually engage in violence. I mean the so-called  
14 paintball cases, your Honor. And those two individuals  
15 were sentenced to 38 months apiece in this courthouse.

16 I think that's important, your Honor, simply  
17 for the 3553(A) factors in dealing with unwanted  
18 sentencing disparities.

19 Judge, with respect to the history and  
20 characteristics of this accused, we have years of  
21 monitored chats, and Mr. Ahmad is not minimizing the two  
22 series of conversations that the government has raised  
23 or this video, nor is he suggesting that he talked about  
24 attending further camps when he was an adult, a  
25 23-year-old, as the government points out.

1 But, your Honor, Mr. Ahmad has been here for  
2 five years. He's made no attempt to go aside from after  
3 this case arose the government informed him that he had  
4 engaged in criminal conduct, and then he made an attempt  
5 to return to Pakistan. But aside from that incident  
6 there has been no action on Mr. Ahmad's part besides  
7 speaking on the Internet about these topics.

8 And, your Honor, I think you can see from  
9 the letters that Mr. Ahmad submitted --

10 THE COURT: He was recruiting people on the  
11 Internet.

12 ATTORNEY MIZER: Yes, your Honor. There was  
13 a conversation about -- with one individual about having  
14 this individual's fiance attend the same basic camp that  
15 he attended at the age 14. Properly put in context,  
16 your Honor, that conversation is there attending a  
17 three-week religious indoctrination course with some  
18 basic weapon familiarization, your Honor, that many  
19 individuals -- and I think it's a testament to how --

20 THE COURT: Well, he said if he had been  
21 able to he would have gone on; and if you go on, then  
22 what do you do with a full, all three phases? You don't  
23 go back to watching daytime TV. You go out and commit  
24 acts of terrorism. Am I right or wrong?

25 ATTORNEY MIZER: Well, I think somewhat is

1 the answer to that, your Honor. I think if LeT and the  
2 Pakistani state believed that it is time to engage the  
3 Indian army in Pakistan and launch that mission then,  
4 yes, that is what happens, your Honor. But I don't know  
5 that that's an automatic consequence that you go to that  
6 training and then automatically you are launched.

7 I think it's important in the four years  
8 since the Mumbai attacks there hasn't been an additional  
9 terrorist act attributed to LeT. So we know that these  
10 camps are operating, and so if it is this kind of  
11 situation where you automatically go to this camp and  
12 then terrorism results, I think it's much more nuanced  
13 than that, respectfully, your Honor.

14 But, importantly, Mr. Ahmad made no effort  
15 during that five-year period to go and accomplish  
16 anything that he has talked about online, and I am  
17 referencing the letters of the individuals who know Mr.  
18 Ahmad offline, your Honor. His foreman who spent  
19 eight-hours days with him and who says he is an honest,  
20 law-abiding citizen who wouldn't hurt anyone.

21 Judge, I think it's -- I haven't seen in  
22 another terrorism case where their employer is saying  
23 can you send him back to us and send him back to work  
24 with us. And I think that that is a testament to their  
25 perception of this individual not on these written pages

1 but in real life, your Honor, and how this man's work  
2 ethic and his peaceful nature outside of the Internet.

3 Your Honor, Mr. Ahmad concedes that there  
4 must be some period of deterrence. And again he didn't  
5 realize the -- the -- I think the severity of this, your  
6 Honor. When Mr. Ahmad and I first sat down, he was  
7 wanting essentially a time-served sentence for this. I  
8 convinced him, your Honor, it's much more serious than  
9 that, and that's why we have come to ask the Court for a  
10 24-month sentence, which, your Honor, we believe is a  
11 very stiff sentence for a five-minute video in this  
12 case.

13 He worked on it for approximately two days.  
14 That's a year in prison for each of the days that he  
15 worked on this video. We think if you lay this out  
16 alongside those 20 or 30 cases that we put that this is  
17 certainly the lower end of the spectrum of the material  
18 support for terrorism cases that this court has seen and  
19 that have been prosecuted federally in the country.

20 Mr. Ahmad has a fiancée in Pakistan, and he  
21 is looking forward, your Honor, to rebuilding his life  
22 and putting this tragic and criminal episode behind him,  
23 your Honor. We'd respectfully ask for a sentence of  
24 24 months.

25 THE COURT: Mr. Gibbs.

1 ATTORNEY GIBBS: Thank you, Judge.

2 Judge, first of all to address a couple of  
3 the points that Mr. Mizer made. In discussing some of  
4 these other cases involving a terrorism offense it's --  
5 again, it's our position that it's very difficult to  
6 compare these other cases because the facts are so  
7 different. Some of them are guilty pleas, some of them,  
8 there was cooperation. Mr. Mizer pointed to two cases  
9 that actually I worked on with Mr. Kromberg here in this  
10 courthouse before Judge Brinkema. He identified them as  
11 Numbers 26 and 27 in his pleading. And that was Yong  
12 Kwon and Muhammad Aatique. Yes, they got significantly  
13 lower sentences than this defendant, but a couple of  
14 differences. First of all, they weren't convicted of  
15 2339(B) offenses and they had a plea agreement calling  
16 for cooperation. They cooperated, testified, got  
17 substantial reductions. I can't remember the original  
18 sentence, but I think it may well have been up to if not  
19 beyond 15 years, and given --

20 THE COURT: Section 5K 1.1 in those.

21 ATTORNEY GIBBS: Exactly, Judge. And  
22 again --

23 THE COURT: That is a pretty significant  
24 omission, Mr. Mizer. You should have told me about  
25 that.

1                   ATTORNEY MIZER: Your Honor, it's in the  
2 papers. The cooperation with the government, it's in  
3 the papers.

4                   THE COURT: Go on.

5                   ATTORNEY GIBBS: And so, Judge, I think -- I  
6 think, you know, that is indicative of how difficult it  
7 is to try to compare these cases. There are other cases  
8 from other districts that also involve please  
9 agreements. I am not familiar with a lot of those. I  
10 don't know whether there was substantial assistance or  
11 not. What I do know, though, in this case we are not  
12 making --

13                  THE COURT: This defendant is cooperating,  
14 isn't he?

15                  ATTORNEY GIBBS: Judge, there is a  
16 cooperation provision in his plea agreement. He has met  
17 with the government, we proffered him, but as I pointed  
18 out in the pleadings, he hasn't done anything to date  
19 that would warrant a departure. So that is where we  
20 stand. We certainly are not closing the door to that  
21 going forward; and if the defendant does provide  
22 substantial assistance, I would be happy to come back  
23 before this court and make the appropriate motion, but  
24 we simply are not there at this point.

25                  Judge, the other quick point I wanted to

1 make and then I had some final remarks, on the -- the  
2 argument about the 2339(B), I don't think it's accurate  
3 to say that in every 2339(B) case the sentence is going  
4 to be capped at 15 years. There are going to be 2339(B)  
5 cases where for various reasons the terrorism  
6 enhancement won't apply.

7 And again that enhancement requires a  
8 specific mens rea, intended to influence or affect  
9 government conduct language. There could certainly be  
10 2339(B) cases where a defendant provided material  
11 support to a foreign terrorist organization but they  
12 didn't have that intent. There could be cases where  
13 they just did it for money. They got paid. There could  
14 be cases where they had a close relationship with  
15 someone like a family member a good friend --

16 THE COURT: I understand that, but that  
17 doesn't help me determine an appropriate sentence here  
18 under the factors of 3553(B). I understand that -- how  
19 the enhancement applies. I understand that he  
20 stipulated to it; but even if he had stipulated to it,  
21 if I didn't think these facts warranted it, I wouldn't  
22 accept the stipulation.

23 So I do think the enhancement appropriately  
24 applies, and I do understand that there could be some  
25 cases in this table where it wasn't applied. That's



1 your point, isn't it?

2 ATTORNEY GIBBS: It is, Judge. That is  
3 exactly right.

4 THE COURT: What else do you have?

5 ATTORNEY GIBBS: Well, Judge, I think the  
6 Court has really hit the core issue for us. Given that  
7 the statutory maximum is 180 months in prison and given  
8 that the advisory guideline range is 292 to 365 months  
9 in prison --

10 THE COURT: Let's go back for a minute. You  
11 said some things in your supplemental brief about  
12 this -- about this video. Of course, we can't determine  
13 how many people saw it or how many people were  
14 influenced by it, or where it now resides, or how it's  
15 now used. I take it you don't know, do you?

16 ATTORNEY GIBBS: No. And I think that goes  
17 to the troubling point from the government's  
18 perspective. Mr. Mizer made the point about we can't  
19 say a single person who --

20 THE COURT: It was posted on YouTube.

21 ATTORNEY GIBBS: It was absolutely posted on  
22 YouTube. The case agent was able to access it on at  
23 least a couple of an occasions.

24 THE COURT: So in effect it's almost  
25 perpetual.

1                   ATTORNEY GIBBS: That -- that is our  
2                   argument, Judge, and I think that's right. Once  
3                   something gets on the Internet like that it's difficult  
4                   to believe that there's ever a point where you can say  
5                   it's disappeared entirely, especially with a group like  
6                   LeT which has a savvy media program. And I think it's  
7                   telling that Talha Saeed, the son of the head of the  
8                   group, reached out to this defendant to get this  
9                   propaganda video produced.

10                  I think that speaks for itself that his  
11                  expertise had value to them, and it's difficult to  
12                  believe they would produce this video, go to that  
13                  effort, if it wasn't useful to the group.

14                  THE COURT: And you've seen the video, of  
15                  course.

16                  ATTORNEY GIBBS: I have, Judge.

17                  THE COURT: And it's characterized by what?

18                  ATTORNEY GIBBS: It's about five minutes  
19                  long. There is audio on it, which is a prayer by Talha  
20                  Saeed, who is the head of the group. It's not in  
21                  English. You can hear Mujahideen being spoken  
22                  throughout. And we've had it translated. It's an  
23                  prayer praising Mujahideen. And as the video plays it  
24                  begins with scenes of atrocities. Dead bodies, very  
25                  bloody images of what appear to be Muslims who have been

1 killed primarily in the Kashmir area. There are some  
2 images of Indian soldiers.

3 The prayer continues to play, and then the  
4 focus of it changes, and it's what I can only describe  
5 as sort of the response to those atrocities. And then  
6 see fighters with their faces covered carrying AK 47s.  
7 You see fighters carrying RPGs. Mr. Mizer is correct.  
8 You see some missiles and fighter jets.

9 Then you see actual -- it's not still  
10 images. It's actually moving images, what appear to  
11 be -- having seen these, it looks very much like IED  
12 attacks on vehicles, military vehicles in appears to be  
13 Afghanistan. And there's a number of these. There is  
14 even one where there's an arrow pointing down. You see  
15 a military vehicle move across the screen, and then  
16 right where the arrow is it explodes from IED attack.

17 That is pretty much the video. And again  
18 when you watch it it's clear that the beginning of it is  
19 to really get people's blood boiling about these  
20 atrocities and then to see the response, to see that  
21 there is a way to fight back. And Mr. Mizer made the  
22 point we can't point to a single person that we can show  
23 was motivated by the video to join LeT. He is right,  
24 but that's the problem.

25 LeT is a foreign terrorist organization.

1 They are not sharing their membership list with us. But  
2 what we do know is they run these training camps. They  
3 run the two that defendant attended. They run the third  
4 paramilitary camp that he also attempted to attend, but  
5 he was too young. But he's told others in e-mail  
6 communications and chats that he wants to go finish it,  
7 he wants to be launched.

8 And again this is the serious paramilitary  
9 training that LeT uses before sending people off to go  
10 fight against India, to go fight against the Indian  
11 troops. So I think to characterize it as it's only a  
12 five-minute video, that five minutes is plenty long to  
13 motivate people to go and join LeT. And to try to  
14 minimize the length of time again --

15 THE COURT: There are also references to the  
16 72, the --

17 ATTORNEY GIBBS: That's exactly right,  
18 Judge.

19 THE COURT: I guess I've gotten so old now,  
20 but I -- it's hard -- of course, terrorism is such a  
21 terrible thing. Many innocents are killed and to hear  
22 young people say that they want to be martyred, so they  
23 go on and they go to some heaven where they have 72  
24 virgins. That's so bizarre. I can't imagine what god  
25 would give you 72 virgins for killing innocent people.

1 ATTORNEY GIBBS: And, Judge, I --

2 THE COURT: Even if one is inclined to  
3 belief in God that would not be a very sensible one to  
4 believe in. In any event, that's just my view. It's  
5 pretty clear that he intended to be launched, which  
6 meant that he intends to go to the third camp, and he  
7 intends to get married, and then he intends to martyr  
8 himself. I think the word is shaheed. And he intends  
9 to have his 72 virgins.

10 If there is a heaven, I hope the reward is  
11 something a heck of a lot better than 72 virgins. What  
12 is a ridiculous, absurd reward.

13 Go ahead.

14 ATTORNEY GIBBS: Judge, I think you've  
15 really hit on the central point that is of concern to  
16 the government, and that is that here is a defendant who  
17 stands before the Court asking for a 24-month sentence.  
18 Twenty-four months from today he would be 26 years old.  
19 Now, he stipulated to the court deportation. I think  
20 it's likely he will return to Pakistan where his fiance  
21 lives, where his family is.

22 But that was the exact same situation when  
23 he made that statement about the 72 virgins. He was  
24 hoping, that was his great aspiration in life, was to  
25 return, to take innocent life, to be martyred and

1        somehow this belief that he would be rewarded in heaven  
2        for that was what -- was the reward waiting for him in  
3        paradise.

4                    And it is difficult to believe that  
5        24 months in prison, having been convicted of a material  
6        support offense that that mindset can possibly being  
7        changed.

8                    THE COURT: I have never heard, this is  
9        irrelevant to this sentencing, but there are obviously  
10       some female shaheeds because there are women who carry  
11       bombs into places. Maybe not LeT, but other  
12       organizations. What do they get? 72 what? All of  
13       which any thinking person would have to conclude that  
14       that was absurd. But anyway it's irrelevant to this  
15       sentencing.

16                   What else do you have? It's demeaning of  
17       women anyway.

18                   ATTORNEY GIBBS: I would agree, Judge.

19                   THE COURT: At a minimum.

20                   ATTORNEY GIBBS: Judge, and I did want to  
21       briefly mention because you talked about it being  
22       demeaning to women, one of the communications that  
23       obviously concerned us that was in our pleading involved  
24       him speaking with this woman online and telling her --  
25       she had asked if girls could do Jihad, and he said,

1 "yes, nowadays in Palestine girls could Jihad." One  
2 girl --

3 THE COURT: I read that, and that's why I  
4 asked what do they get? 72 what?

5 ATTORNEY GIBBS: Right. And if there's an  
6 answer to that question, Judge, he didn't in that  
7 communication say what it was. I don't independently  
8 know the answer to that. Obviously, that is concerning.  
9 I think it is demeaning to women, to sort of take that  
10 approach.

11 THE COURT: No society flourishes if they're  
12 going to discount the talents and abilities of half of  
13 their population, that they are exactly like the talents  
14 and the abilities of the other half. I have done a lot  
15 of things in my life, and I have never done anything  
16 that a woman, some women couldn't do better if not as  
17 well. Well, I should say as well if not better. That  
18 includes being a fighter pilot and other things I have  
19 done in my life. There are women who could do it far  
20 better than I did it. And there are men who could have  
21 done it far better than I did it.

22 No society flourishes if they're going to  
23 retrain one-half of its population. And anyway, it's  
24 evil to do it.

25 Go ahead. What else do you have?

1 I am not sitting today in judgment of other  
2 societies or religions or anything else. I am sitting  
3 today solely to decide what is the proper or just  
4 sentence to impose on this young man for the activities  
5 he engaged in under the sentencing factors of 3553.  
6 That's what I am sitting on today. But I make these  
7 other remarks in the vain hope that it might strike  
8 somebody to think a bit about these things. And I am  
9 thinking about others in this courtroom who may have  
10 similar views to this defendant.

11 ATTORNEY GIBBS: Thank you, Judge. Just  
12 real briefly. I think the Court is obviously very  
13 familiar with the record, which I appreciate. But the  
14 one point I want to make is, Judge, if all this  
15 defendant had done was construct this propaganda video  
16 for LeT and that was the entirety of his conduct, the  
17 advisory guideline range in this case would still be the  
18 same. It would that 292 to 365 months. And obviously  
19 we are capped at the statutory maximum.

20 But as we point out in the sentencing memo  
21 that I am sure the Court is familiar with when the  
22 defendant produced that video, that was the culmination  
23 of years of activity to trying to LeT. I mean, again --

24 THE COURT: Many of them as a juvenile.

25 ATTORNEY GIBBS: Exactly. Fourteen to



1 15 years old, attending the two first levels of LeT  
2 training. Then he tried to go to the third level and  
3 got rejected for being too young. But, Judge, that  
4 didn't deter him. He told other people online, as I've  
5 talked about, that his goal was to go back and finish  
6 that and to be launched. But keep in mind he also acted  
7 as a personal recruiter for LeT here from his home in  
8 Virginia.

9 THE COURT: I am familiar with all that.

10 ATTORNEY GIBBS: And, Judge, so we don't  
11 view this similar as a case where, even if it was a  
12 video, that that was somehow one slip-up. This is a  
13 case where the defendant --

14 THE COURT: They haven't argued that it was  
15 a slip-up.

16 ATTORNEY GIBBS: Understood, Judge. And so  
17 here we have an individual who is familiar with LeT,  
18 familiar with what this group does, produced this  
19 propaganda video. He is facing well above the statutory  
20 maximum under the guidelines, and we believe under the  
21 3553(A) factors for all the reasons of the seriousness  
22 of the offense, to promote respect for the law, to  
23 provide just punishment, and equally importantly for  
24 specific and general deterrence --

25 THE COURT: Well, in these cases that Mr.

1 Mizer has cited, that are listed in this article -- I am  
2 not sure why the article was cited other than that, Mr.  
3 Mizer. I think that's your reason -- you are not  
4 interested in the trust of the article. You are  
5 interested in the data that he presents; is that right?

6 ATTORNEY MIZER: Yes, your Honor. That is  
7 correct.

8 THE COURT: Well, in all that data which  
9 case would you say is analogous to this case?

10 ATTORNEY GIBBS: If I could just have a  
11 moment, Judge. It would obviously have to be a 2339(B)  
12 case, and I am familiar with some of these.

13 THE COURT: It would have to be a 2339(B)  
14 case in which the enhancement applied.

15 ATTORNEY GIBBS: Correct, Judge.

16 THE COURT: Well, there are any number of  
17 these. For example, look at Number 30. That was in the  
18 Southern District of New York. He got the statutory  
19 maximum of 15 years for traveling to Pakistan and  
20 attending the LeT training camp. Why won't that be the  
21 first one you'd cite?

22 ATTORNEY GIBBS: Judge, and I agree. I  
23 think that's good, and in some respects simply  
24 traveling --

25 THE COURT: Didn't you look at this chart

1 and consider which one you would call to my attention as  
2 being the most analogous.

3 ATTORNEY GIBBS: Well, I think the Brent  
4 case, which is the one the Court points out is a good  
5 one. I also think Number 28, the Sadequee case from the  
6 Northern District of Georgia.

7 THE COURT: That is a little different  
8 because that included 2339(A)(2) and went to a jury  
9 trial and -- well, that is a little different. What  
10 else do you have?

11 ATTORNEY GIBBS: Well, Judge, really within  
12 this -- these cases, that's among the best. And Number  
13 24, the Chandia case, that was actually my case here in  
14 this courthouse as well.

15 THE COURT: Look at the Chandia case?

16 ATTORNEY GIBBS: Judge Hilton sentenced him  
17 to 180 months. Again, that was on a jury trial, not a  
18 plea, but I think that that is another one that is  
19 pretty analogous to this one. And that's also --

20 THE COURT: That hasn't been resentenced  
21 because that case was vacated, and it's going to be  
22 resentenced. So that's not a good one to use, is it?

23 ATTORNEY GIBBS: Well, actually, the Fourth  
24 Circuit just affirmed that last week.

25 THE COURT: So what did he receive?

1 ATTORNEY GIBBS: 180 months.

2 THE COURT: All right. And they affirmed  
3 that.

4 ATTORNEY GIBBS: They did affirm that,  
5 Judge. And that will be a published opinion.

6 THE COURT: Are you familiar with the recent  
7 Ninth Circuit case where a sentence was reversed for  
8 being too lenient?

9 ATTORNEY GIBBS: Judge, I am familiar -- I  
10 am familiar with the fact that that occurred. I am not  
11 familiar with all the facts of that case.

12 THE COURT: All right. Well, it won't play  
13 any role in this sentencing then because you didn't cite  
14 it, and Mr. Mizer has not had an opportunity to review  
15 it and address it. So it won't play any role.

16 Do you have anything else?

17 ATTORNEY GIBBS: No, judge. No, just again  
18 we've argued for the 180 months. We think it is an  
19 appropriate sentence given the conduct and the 3553  
20 factors. And I want to thank you for your time.

21 THE COURT: Any reason why the Court should  
22 not now impose sentence?

23 ATTORNEY MIZER: No, your Honor.

24 THE COURT: All right.

25 Come to the podium, Mr. Ahmad.

1 THE DEFENDANT: (Complied).

2 THE COURT: Mr. Ahmad, you stand convicted  
3 of the serious crime of providing material support to a  
4 designated terrorist organization, and the law requires  
5 that I consider a variety of factors in imposing an  
6 appropriate sentence.

7 First, your personal history and  
8 characteristics, and I think I am familiar with those  
9 through the presentence report and through the factors  
10 that your counsel has called to my attention.

11 The law also requires that I take into  
12 account the seriousness of the offense, and it is a  
13 serious offense. Congress has explicitly made it and  
14 indicated that it is a serious offense. Terrorist  
15 organizations are a cancer on any civil, civilized  
16 society because terrorist organizations seek to affect  
17 policy and national behavior by killing innocent people.  
18 So it's a very serious crime.

19 Your counsel points out that we can't  
20 tell -- and he is right, we can't tell how many people  
21 your video might have affected, might have recruited,  
22 might have influenced. We can't. But that doesn't mean  
23 that it wasn't seen by people. The government properly  
24 points out that, yes, your video might be seen by lots  
25 of people who wouldn't be influenced by it, but it has a

1 target audience, young alienated people in the, chiefly,  
2 I would assume, of the persuasion -- they'd have to be  
3 Islamic, to be sure, Muslim.

4 That doesn't mean there haven't in history  
5 been Christian terrorist organizations, Jewish terrorist  
6 organization. There have been, they are no more  
7 laudable or praiseworthy than LeT. Just as there have  
8 been peaceful Christians, peaceful Jews and peaceful  
9 Muslims, there have also been terrorists in each of the  
10 three.

11 The law requires that I take into account,  
12 as I said, the seriousness of this offense. The law  
13 also requires that I -- it's not just the video. It's  
14 also your recruiting efforts. The law requires that I  
15 take into account the need to impose a sentence that  
16 promotes respect for the law, that provides just  
17 punishment for the offense and that deters you and  
18 deters others.

19 Deterring you, I think, is important, but I  
20 am not sure that the sentence I impose is going to deter  
21 you from engaging in terrorist activities. But it's  
22 important that the sentence I impose on you stand as a  
23 beacon, as a warning to all others that providing  
24 material support to terrorist organizations is serious  
25 and will involve serious punishment. General deterrence

1 is very important in this sentence.

2 The law also requires that I take into  
3 account the guidelines. They are not mandatory. They  
4 are advisory. In this case, the bottom of the  
5 guidelines -- what was the bottom of the guidelines?  
6 Was it 180?

7 ATTORNEY GIBBS: The guidelines was  
8 292 months, Judge.

9 THE COURT: Right. So it's really above the  
10 maximum. So the guidelines play no role essentially in  
11 this sentencing. The statutory maximum is 180 months.

12 The law also requires that I take into  
13 account the need to protect society from you. I don't  
14 know what you will do with the rest of your life,  
15 Mr. Ahmad. I hope that you will focus on the good  
16 things about Islam and to make something of yourself in  
17 building a civilized, humane society in Pakistan. But I  
18 don't have any illusions that the sentence I impose on  
19 you today will do that.

20 I've taken into account all of these  
21 factors. Ultimately, a sentence is a judgment. It's  
22 not a mathematical calculation. It's a judgment.

23 I also have to impose a sentence that does  
24 not involve unwarranted disparities between the sentence  
25 I impose on you, Mr. Ahmad, and the sentence that has

1       been imposed on others for essentially similar conduct;  
2       and in that regard I have looked at the data that your  
3       counsel has provided and also have -- the data is  
4       available, Mr. Mizer, at the sentencing commission. You  
5       can get from the sentencing commission every sentence  
6       ever imposed under 2339(B).

7               But they are, as Mr. Gibbs pointed out,  
8       difficult to assess the comparability because you have  
9       Section 5K 1.1 motions in some, you have other statutes  
10      that play in others. You might not have the terrorist  
11      enhancement in others. So it's difficult to do.

12             In the end it is the judgment of this court  
13      that you be committed, Mr. Ahmad, to the Bureau of  
14      Prisons, to the custody of the Bureau of Prisons for a  
15      period of 144 months. That's less than the statutory  
16      maximum.

17             The 24 months that you have asked for, or  
18      time served that you had really asked for, that your  
19      counsel has suggested is woefully inadequate to serve  
20      the purposes of general deterrence and to account for  
21      the seriousness of this crime. It is clear that  
22      24 months would not account for the seriousness of  
23      providing material support.

24             I have sentenced others in connection with  
25      these violations, and virtually all of the others, I



1 guess I remember one particularly, received twice the  
2 sentence that you've received today. Now, his role was  
3 different from yours. He actually bore arms. But  
4 nonetheless, I think this sentence adequately accounts  
5 for all of the 3553 factors.

6 It isn't as severe as the government would  
7 seek, but I want to make clear that it is what it is  
8 because of the reasons the government has argued, namely  
9 general deterrence and seriousness of the crime. And  
10 those principal factors would not be served by a  
11 24-month or time served.

12 You will pay \$100 special assessment. Upon  
13 release from confinement, you are to serve five years of  
14 supervised release. As a special condition of that  
15 supervised release, you are to cooperate fully to affect  
16 your prompt removal from this country to your country of  
17 origin, to Pakistan.

18 Have I omitted anything?

19 The court does not impose any punitive fine  
20 because of your modest resources.

21 Mr. Gibbs, have I omitted anything?

22 ATTORNEY GIBBS: No, judge. Thank you.

23 THE COURT: Let me ask the probation  
24 officer.

25 PROBATION OFFICER: No, your Honor.

1 THE COURT: All right.

2 Anything further from the government, then.

3 ATTORNEY GIBBS: No, judge, thank you.

4 THE COURT: And you'll receive credit for  
5 time already served in connection with this offense as  
6 computed by the Bureau of Prisons pursuant to statute.

7 Now, you -- I would be happy to reduce that  
8 sentence on the motion of the government for substantial  
9 assistance should that occur.

10 I take it that there is no optimism that  
11 that might occur. The defense would say because he does  
12 not have information that would be of substantial  
13 assistance to the government, and the government would  
14 be prepared to offer ways in which he could offer  
15 substantial assistance, but that is not the business of  
16 this court. If such a motion is filed, I would be  
17 pleased -- I am always pleased to reduce sentences.  
18 Always pleased to do that.

19 ATTORNEY GIBBS: Thank you, sir, and we  
20 would certainly be pleased if that were the case as  
21 well. It's difficult to predict at this point.

22 THE COURT: Anything further, Mr. Mizer?

23 ATTORNEY MIZER: No, your Honor.

24 THE COURT: All right. I thought both of  
25 you submitted briefs that were helpful to the Court.

1 Thank you.

2 Good luck, Mr. Ahmad. I hope that you --  
3 you have a long life ahead of you. Life is making  
4 choices and living with the consequence of the choices  
5 you make. You don't determine, Mr. Ahmad, where you are  
6 born, to whom you are born or whether you are born with  
7 handicaps or talents, but you do determine how you  
8 respond to all of those things.

9 You have a long life ahead of you. You have  
10 opportunity to make the most of your life. Your desire  
11 to marry and have children is as understandable and  
12 human as it could possibly be. It's a desire I have  
13 had. Everybody in this courtroom has had that desire.  
14 But we didn't get into this, but I think that the role  
15 that parents play in the paths their children chose is  
16 pretty significant, and I hope you will remember if you  
17 do have children, and I hope you will, that you are the  
18 model for your children. And any parent wants to have  
19 their children have a fulfilling and happy life. A life  
20 of engaging in terrorism is not that.

21 Anything further?

22 All right.

23 I thank Counsel for your cooperation.

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CERTIFICATE

I, MICHAEL A. RODRIQUEZ, an Official Court Reporter for the United States District Court, in the Eastern District of Virginia, Alexandria Division, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had upon the sentencing hearing in the case of UNITED STATES OF AMERICA v. JUBAIR AHMAD.

I further certify that I was authorized and did report by stenotype the proceedings in said sentencing hearing, and that the foregoing pages, numbered 1 to 44, inclusive, constitute the official transcript of said proceedings as taken from my machine shorthand notes.

IN WITNESS WHEREOF, I have hereto subscribed my name this 17th day of June, 2012.

/S/  
Michael A. Rodriguez, RPR/CM/RMR  
Official Court Reporter

MICHAEL A. RODRIQUEZ, RPR/CM/RMR